



## Report to the Auburn City Council

Action Item

5

Agenda Item No.

City Manager's Approval

**To:** Mayor and City Council Members

**From:** Bernie Schroeder, Director of Public Works *BS*  
Megan Siren, Administrative Analyst *MS*

**Date:** February 14, 2011

**Subject:** Consultant Agreement for Wastewater Consulting – Stantec Consulting Services, Inc.

### The Issue

Shall the Council authorize a consultant agreement to Stantec Consulting Services, Inc. for Wastewater Consulting?

### Conclusions and Recommendation

Staff recommends that the City Council

1. BY RESOLUTION, authorizes the Director of Public Works to execute Amendment No. 1 to the consultant agreement with Stantec Consulting Services, Inc. for the Wastewater Improvement Project.
2. BY RESOLUTION, authorize the Director of Public Works to execute the consultant agreement with Stantec Consulting Services, Inc. for Wastewater Consulting as required by the National Pollutant Discharge Elimination System Permit.

### Background

On August 24, 2009, the City Council approved a consultant contract with Eco:logic Engineering for construction support as it related to the 2009 Wastewater Treatment Plant Improvement Project. The consultant contract included the following tasks: Design Engineering Services during Construction, Construction Management Services (Electrical & Re-Bar Placement) and Post Construction Services which was totaled at \$368,030. Throughout construction, several tasks not anticipated at the start of the project were implemented including the installation of the new fiber-optic line at the wastewater treatment plant, solar system coordination and an additional Ultra-Violet Validation Study to verify the performance of the UV system. The City also received a savings in equipment costs, when the consultant purchased equipment at a discount. As a result of the additional tasks, the consultant is requesting an amendment to the consultant agreement for an additional \$16,000 to complete the close-out of the project including completing the SCADA configuration, preparation of record drawings, completing the operations and maintenance manual and closing out the project. During the project, Eco:logic Engineering was acquired by Stantec Consulting Services, Inc, but the Project Manager and team has remained the same.

On September 22, 2010, the Central Valley Regional Water Quality Control Board (Regional Board) approved the City of Auburn's National Pollutant Discharge Elimination System permit (Permit) for operations and discharge from the Wastewater Treatment Plant. The Permit requires additional compliance studies to be completed.

The consultant agreement with Stantec Consulting Services Inc. is broken up by tasks to ensure compliance with the City's NPDES permit and is at a total of cost of \$59,000. The consultant agreement includes work related to amending the Permit as it relates to aluminum, Toxicity Reduction Evaluation Work Plan, Best Practical Treatment or Control (BPTC) Work Plan, BPTC for Iron, Chemical Additives Evaluation & Minimization Study and General NPDES Compliance Assistance. Stantec also completed the Aluminum Toxicity Study in November 2010 under savings realized in a prior contract, so the City could move promptly to amend the City's Permit with the Regional Board as it relates specifically to aluminum. All the studies and work plans will be submitted to the Regional Board as required by the City's Permit.

Detailed descriptions of each task are included as part of the professional service agreement.

**Alternatives Available to Council; Implications of Alternatives**

1. Proceed with the staff recommendation.
2. Do not proceed with staff recommendation.

**Fiscal Impact**

The cost for the amendment to the professional services agreement for the WWTP Improvement Project is at a cost of \$16,000. The Sewer Enterprise Fund includes adequate funding in the capital project for the WWTP Improvement Project.

The professional service agreement total \$59,000 which was included in the preparation of the proposed 2010-11 City of Auburn Operating Budget. The Sewer Enterprise Fund under Professional Services includes adequate funding.

Attachments:     Amendment to the Consultant Agreement/Resolution  
                         Consultant Agreement/Resolution

**AMENDMENT No. 1 TO PROFESSIONAL SERVICES AGREEMENT**  
(City of Auburn and Stantec Consulting Services Inc.)

This Amendment No. 1 ("Amendment") to Professional Services Agreement ("Agreement") is made on this 14th day of February, 2011 at Auburn, California, by and between the City of Auburn, a municipal corporation, 1225 Lincoln Way, Auburn, California 95603 ("City") and Stantec Consulting Services Inc., 3875 Atherton Road, Rocklin, CA 95765 ("Contractor").

This "Amendment" modifies the original "Agreement" between the "City" and the "Contractor" dated August 24, 2009 in the following fashion:

- A. "City" and "Contractor" desire to amend the "Agreement" by modifying section 3.1 – Scope of Services as set forth in "Consultant's" January 4, 2011 proposal to "City" attached hereto as Exhibit A-1 and incorporated herein by this reference.
- B. "City" and "Contractor" desire to amend the "Agreement" by modifying the total compensation and costs payable to "Consultant" under this "Agreement" to a not-to-exceed sum of \$384,000.

Initials: (City) \_\_\_\_\_ (Contractor) 

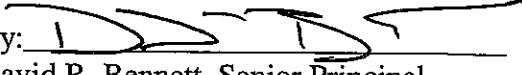
**TO EFFECTUATE THIS AGREEMENT**, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

**"City"**  
**City of Auburn**

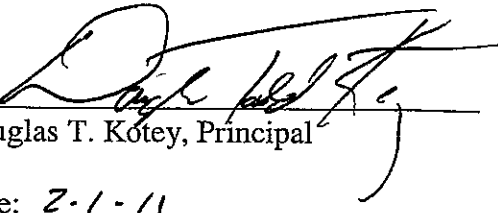
By: \_\_\_\_\_  
Bernie Schroeder, Director of Public  
Works

Date: \_\_\_\_\_

**"Consultant"**  
**Stantec Consulting Services Inc.**

By: \_\_\_\_\_  
David R. Bennett, Senior Principal

Date: 2/1/11

By: \_\_\_\_\_  
Douglas T. Kotey, Principal

Date: 2-1-11

Attest:

By: \_\_\_\_\_  
Amy Lind, City Clerk

Date: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
Michael G. Colantuono, City Attorney

A-1



**Stantec**

Stantec Consulting Services Inc.  
3875 Atherton Road  
Rocklin CA 95765  
Tel: (916) 773-8100

**ECO:LOGIC**  
ENGINEERS - CONSULTANTS

January 4, 2011  
File: 184030011 and AUBR09-001

Bernie Schroeder P.E.  
Director of Public Works  
City of Auburn  
1225 Lincoln Way  
Auburn, CA 95603

Reference: City of Auburn WWTP 2008 Improvements Project Engineering Services Agreement Change Order Request

Dear Ms. Schroeder:

We are close to exceeding our original engineering services budget for providing engineering services during construction for the 2008 Improvements Project. The attached Table 1 summarizes our original tasks with the associated budgets along with the new tasks that were added to the contract. We were able to complete these additional tasks within our original budget by scaling back or not completing some of the remaining tasks. The original contract fee was \$368,000 and as of December 10<sup>th</sup> we have expended approximately \$352,500 so we have approximately \$15,500 remaining in the original contract. Since we scaled back much of our original tasks to complete the additional tasks, we need a small change order to complete the remaining work. I have summarized our cost to complete the project by task below:

**TASK 200.006 SCADA CONFIGURATION**

Additional time to complete modifications to the SCADA system and to provide ongoing support as requested by operations staff. We are also requesting additional time of up to 8 hours per month for the next 6 months to provide ongoing assistance to operations staff. The cost to complete this work is approximately \$7,000 which would increase this budget to \$74,400.

**TASK 200.011 PREPARE RECORD DRAWINGS**

This task has not been initiated. We will prepare record drawings and provide the city with an electronic version and one full size drawing set and three half size drawing sets. Our original fee to complete this task is approximately \$18,640. We can reduce our effort and we can complete this work for approximately \$15,000.

**TASK 200.012 PREPARE OPERATIONS AND MAINTENANCE MANUAL**

Draft Operations and Maintenance (O&M) Manual is complete. Cost to meet with operations staff, make any revisions to the O&M manual and prepare 5 copies of the manual is approximately \$3,000 which would revise the budget for this task to \$79,159.

**TASK 200.017 COMPILE RECORD DRAWINGS AND PROJECT CLOSE OUT**

This task has not been initiated. The remaining project management task will be assigned to close out the project. The original budgeted amount was \$2,944. We can complete this task for \$1,800.

**Stantec**

January 4, 2011  
Ms. Bernie Schroeder  
Page 2 of 2

Reference: City of Auburn WWTP 2008 Improvements Project Change Order Request

**TASK 200.021 DESIGN OF NEW FIBER CONNECTION**

This task was created to assist in the installation of a new fiberoptic line at the wastewater treatment plant. This task is nearly completed but there is still some time needed to complete this work and to purchase and install some fiberoptic switches. Cost to complete this task is approximately \$1,200 including purchase of hardware (switches) which would revise the budget for this task to \$3,300.

**TASK 200.023 UV VALIDATION STUDY**

This was an additional task to verify the performance of the UV system. Additional time to complete an UV assessment report is approximately \$3,500 which would revise the budget for this task to \$33,900.

The total cost to complete the remaining tasks above is \$31,500. Therefore, we are requesting an additional \$16,000 to complete our contract. We would bill our time and expenses based on our fee schedule from the original contract agreement. I have included a project change order request for your consideration. Please do not hesitate to call if you wish to discuss this change order amendment and please let me know what additional forms are needed for you to process this amendment

Sincerely,

**STANTEC CONSULTING SERVICES INC.**



Michael Harrison P. E.  
Project Manager  
Tel: (916) 773-8100  
Fax: (916) 773-8448  
Email: [Mike.harrison@stantec.com](mailto:Mike.harrison@stantec.com) and [harrison@ecologic-eng.com](mailto:harrison@ecologic-eng.com)

1 RESOLUTION NO. 11-  
2 RESOLUTION AUTHORIZING AMENDMENT NO. 1 THE CONSULTANT  
3 AGREEMENT WITH STANTEC CONSULTING SERVICES FOR THE WASTEWATER  
4 IMPROVEMENT PROJECT  
5 -----

6 THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

7 That the City Council of the City of Auburn does hereby authorize the  
8 Director of Public Works to execute Amendment No. 1 to the consultant  
9 agreement with Stantec Consulting Services, Inc. for the Wastewater  
10 Improvement Project.

11 A true and correct copy of said Consultant Agreement is attached hereto as  
12 Exhibit "A."  
13

14 DATED: February 14, 2011  
15

16 \_\_\_\_\_  
William W. Kirby, M.D., Mayor

17 ATTEST:  
18

19 \_\_\_\_\_  
Joseph G. R. Labrie, City Clerk

20 I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify  
21 that the foregoing resolution was duly passed at a regular session meeting of  
22 the City Council of the City of Auburn held on the 14<sup>th</sup> day of February 2011  
23 by the following vote on roll call:

24 Ayes:

25 Noes:

26 Absent:

27 \_\_\_\_\_  
Joseph G. R. Labrie, City Clerk  
28

**PROFESSIONAL SERVICES AGREEMENT**  
(City of Auburn /Stantec Consulting Services, Inc.)

**1. IDENTIFICATION**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Auburn a California municipal corporation ("City") and *Stantec Consulting Services, Inc. a New York Corporation with offices in California* ("Consultant").

**2. RECITALS**

- 2.1 City has determined that it requires the following professional services from a consultant: National Pollutant Discharge Elimination System Permit Assistance & Compliance.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

**NOW, THEREFORE,** for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

**3. DEFINITIONS**

- 3.1 "Scope of Services": Such professional services as are set forth in Consultant's January 31, 2011 proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 "Approved Fee Schedule": Such compensation rates as are set forth in Consultant's January 31, 2011 fee schedule to City attached hereto as Exhibit B and incorporated herein by this reference.
- 3.3 "Commencement Date": February 1, 2011.
- 3.4 "Expiration Date": February 1, 2012.

**4. TERM**

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 ("Termination") below.

**5. CONSULTANT'S SERVICES**

- 5.1 Consultant shall perform the services identified in the Scope of Services. City



shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of Fifty Nine Thousand Dollars (\$59,000) unless specifically approved in advance and in writing by City.

- 5.2 Consultant shall obtain a City business license prior to commencing performance under this Agreement.
- 5.3 Consultant shall perform all work to the professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. **Eric Zeigler** shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.

## 6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule and Section 5.1 of this Agreement above.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant unless otherwise required by law.

- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule nor to claim payment other than in compliance with this Agreement, including Section 5.1 above.

## **7. OWNERSHIP OF WRITTEN PRODUCTS**

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

If the City or its agent modifies any the written products, the City agrees to indemnify and hold the Consultant harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) caused by such modification.

## **8. RELATIONSHIP OF PARTIES**

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

## **9. CONFIDENTIALITY**

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

The use and disclosure of the confidential information shall not apply to information which (a) was known to the Consultant before receipt of the City; or (b) becomes publicly known other than through the Consultant; or (c) is disclosed pursuant to the requirements of a governmental authority or judicial order.

**10. INDEMNIFICATION**

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, reasonable attorneys' fees, litigation costs, or any other cost arising out of the negligent acts, errors or omissions to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.
- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the City requests with respect to a claim provide a deposit for the defense of, and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the negligence or willful misconduct of the City. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice, expert fees and all other costs and expenses of litigation.
- 10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 are not limited by the provisions of any workers' compensation statute or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully

responsible and to indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.

- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies apply to the claim, demand, damage, liability, loss, cost or expense.

## **11. INSURANCE**

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:

11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.

11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.

11.1.3 Worker's Compensation insurance if and as required by the laws of the State of California.

11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).

- 11.2 Consultant shall require each of its subcontractors to maintain insurance coverages that meet all of the requirements of this Agreement.

- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium(s) thereon at Consultant's expense.
- 11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the policies required by this Agreement are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall file with City's Risk Manager such certificate(s) prior to commencement of work under this Agreement.
- 11.6 Consultant shall provide proof to the City's Risk Manager that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage at least two weeks prior to the expiration of the coverages.
- 11.7 The general liability and automobile policies of insurance required by this Agreement shall contain endorsements naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.8 The insurance provided by Consultant shall be primary to any other coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to

guarantee payment of losses and expenses.

- 11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

**12. MUTUAL COOPERATION**

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 12.2 If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

**13. RECORDS AND INSPECTIONS**

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

**14. PERMITS AND APPROVALS**

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

**15. NOTICES**

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

City of Auburn  
1225 Lincoln Way  
Auburn CA 95603  
Telephone: (530) 823-4211 x\_\_\_\_  
Facsimile: (530) 823-4216

If to Consultant:

*Stantec Consulting Services*  
*3875 Atherton Rd*  
*Rocklin, CA 95765*  
Telephone: (916) 773-8100  
Facsimile: (916) 773-8448

With courtesy copy to:

Michael G. Colantuono, Esq.  
Auburn City Attorney  
Colantuono & Levin, P.C.  
11406 Pleasant Valley Road  
Penn Valley, CA 95946-9024  
Telephone: (530) 432-7359  
Facsimile: (530) 432-7356

**16. SURVIVING COVENANTS**

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

**17. TERMINATION**

- 17.1. City may terminate this Agreement for any reason on fifteen calendar days' written notice to Consultant. Consultant may terminate this Agreement for any reason on fifteen calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.
- 17.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

**18. GENERAL PROVISIONS**

- 18.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.
- 18.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph at the head of which it appears, the section or paragraph, and not such heading, shall govern construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular and vice versa, in any place or places herein in which the context requires such substitution(s).
- 18.4 The waiver by City or Consultant of any breach of any term, covenant or condition of this Agreement shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition of this Agreement. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in a writing signed by one authorized to bind the party asserted to have consented to the waiver.
- 18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether or not reduced to judgment, shall be entitled to its reasonable court costs, including any accountants' and attorneys' fees incurred in such action. The venue



for any litigation shall be Placer County, California and Consultant hereby consents to jurisdiction in Placer County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.

- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
- 18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

**TO EFFECTUATE THIS AGREEMENT**, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

**"City"**  
City of Auburn

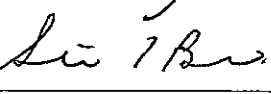
By \_\_\_\_\_

Date: \_\_\_\_\_

**"Consultant"**  
Stantec Consulting Services, Inc.

By:   
Rich Stowell, Principal

Date: 4 February 2011

By:   
Steven L. Beck, Principal

Professional Services Agreement  
City of Auburn / Stantec Consulting Services, Inc.

Date: 2-4-11

Attest:

By \_\_\_\_\_  
Deputy City Clerk

Date: \_\_\_\_\_

Approved as to form:

By \_\_\_\_\_  
Michael G. Colantuono, City Attorney

Date: \_\_\_\_\_

## **Exhibit A**

### **City of Auburn NPDES Assistance Scope of Services**

STANTEC proposes to perform the following NPDES compliance assistance tasks for the City of Auburn:

#### **TASK 1 – AMENDMENT OF ORDER**

Based in the aluminum toxicity study completed and submitted to the Regional Water Board with a request that the City's Order be reopened and amended to include a more appropriate effluent limitation for aluminum, the Regional Water Board has issued a Tentative Order amending the City's Order. The Tentative Order is currently out for public comment and is scheduled to be heard during the February Regional Water Board hearing. Under this task, Stantec will provide assistance to the City related to facilitating the adoption of the amended Order. This task includes communicating with Regional Water Board Staff (Staff), providing any additional technical information related to the aluminum toxicity study that may be requested by Staff, meeting with the City, preparation for the Regional Water Board hearing, and attending the Regional Water Board hearing.

Estimated task budget: \$9,000.

#### **TASK 2 – TOXICITY REDUCTION EVALUATION (TRE) WORK PLAN**

The City's Order, in Special Provision VI.C.2.a.i, requires the development and submittal of a TRE work plan by February 9, 2011. This task includes the development of a TRE work plan that outlines the procedures for identifying sources of, and reducing or eliminating effluent toxicity. The work plan will be developed in accordance with USEPA guidance and will provide adequate detail to allow the City to initiate accelerated monitoring and a TRE, when appropriate, as required by the Order. The work plan will be developed for submittal to the Regional Water Board for approval by the Executive Officer.

Estimated task budget: \$4,000.

#### **TASK 3 – NEGOTIATE REVISION OF MRP WITH REGIONAL BOARD STAFF**

The groundwater monitoring and reporting program currently specified and required as part of the City's Order and MRP is inconsistent with most modern day Orders. We therefore believe that there is an opportunity to work with Regional Water Board staff to propose a significantly more limited monitoring program that reduces ongoing monitoring costs to the City, while providing the Regional Water Board with the most critical data to assure protection of human health and the environment. We have successfully negotiated similar monitoring programs and believe that modification and reduction of the groundwater analytical program is reasonable achievable. Accordingly, the fee associated with this task is for the preparation of a letter request for reduced monitoring, including a proposed analytical program that meets regulatory requirements and is consistent with most modern Orders, for Regional Water Board staff review. This task also includes up to one meeting with the Regional Water Board.

Estimated task budget: \$3,500.

#### **TASK 4 – BEST PRACTICAL TREATMENT OR CONTROL (BPTC) WORK PLAN AND SCHEDULE**

Provision VI.C.2.c.i of the Order Requires the City to submit a technical report describing a proposed work plan and schedule for providing BPTC as required by Resolution 68-16 for iron in the groundwater underlying the WWTP equalization ponds. The technical report describing the work plan and schedule is required to

contain a preliminary evaluation of each component and propose a time schedule for completing the comprehensive technical evaluation. The technical report work plan and schedule is required to be submitted to the Regional Water Board by March 22, 2011 for approval by the Executive Officer.

This task includes the production of the required technical report BPTC work plan and time schedule for submittal to the Regional Water Board for review and approval. Stantec will provide a draft work plan to the City for review and comment. Following the incorporation of the City's comments, a final work plan and schedule will be produced for submittal to the Regional Water Board. Since it is not anticipated that the Regional Water Board will provide approval of the work plan during the calendar year 2011, activities related to the commencement of the comprehensive technical evaluation are not included as a part of this scope. Further, defining the scope and level of effort required to conduct the comprehensive BPTC technical evaluation will not be known until the preliminary evaluation is completed and the proposed work plan approved.

Development of the work plan and schedule will include the following:

- Review of Order requirements;
- Review of the requirements and limitations of Resolution 68-16;
- Review and evaluation of existing effluent and groundwater data (City to provide data in electronic spreadsheet format);
- Evaluation and summary of sources and causes of iron in groundwater;
- Review of potential mitigation measures; and
- Summary of proposed actions and time schedule for completion of actions;

Estimated task budget: \$10,000.

#### **TASK 5 – BPTC FOR IRON ANNUAL REPORT**

Provision VI.C.2.c.v of the Order Requires the City to submit annual reports describing the overall status of BPTC implementation and compliance with groundwater limitations of the past reporting year. These annual progress reports are due to the Regional Water Board by January 30 of each year. Under this task, Stantec will produce the progress report due by January 30, 2011 and the progress report due by January 30, 2012. The January 2011 progress report is expected to be fairly simple because it is required to be submitted prior to the development and submittal of the Order-required work plan and schedule. The January 2012 progress report will include a summary of the status of final compliance, describe how the City is on schedule to meet the final compliance date, and describe the remaining compliance tasks. Groundwater data will be necessary for the preparation of the January 30, 2012 progress report. Thus, for the completion of this task, it is expected that the City will provide all of the necessary groundwater monitoring data to Stantec in electronic spreadsheet format.

Estimated task budget: \$10,000.

#### **TASK 6 – CHEMICAL ADDITIVES EVALUATION AND MINIMIZATION STUDY**

Under this task, Stantec will prepare the Chemical Additives Evaluation and Minimization Study report to fulfill the requirement of Special Provision VI.C.3.a of the Order. As a part of this study, the chemical additives necessary for the proper operation and treatment of the City's wastewater facility will be identified and quantified. Stantec will coordinate with City staff and wastewater treatment facility operators to obtain the information necessary to complete this study. It is expected that the City will provide Stantec with all of the necessary data in electronic form. The study will include an evaluation of feasible methods for reducing the amount of chemical additives. This task includes the modification of the Facility's Operation and Maintenance Manual to include recommended methods for reducing the amount of chemical additives.

Estimated task budget: \$8,000.

## **TASK 7 – GENERAL NPDES COMPLIANCE ASSISTANCE & TRACKING**

Under this task, Stantec will enter NPDES permit and Cease and Desist Order required submittals and due dates into Stantec's permit tracking system. Stantec will provide the City with a summary sheet output from the Stantec permit tracking system that lists permit-required tasks, projected start dates, submittal dates, and the permit or Cease and Desist Order page number where the requirement is listed. Stantec will also provide the City with a bound copy of the NPDES permit and Cease and Desist Order that is tabbed for easy reference.

Also under this task, Stantec will assist the City on an as-needed basis on NPDES permit related issues which may arise during the 2011 calendar year. NPDES permit related issues might include assistance with the review and evaluation of analytical data, data report preparation, responding to Regional Water Board requests for information or any notices of violation, and addressing any other unforeseen NPDES permit related issues that might arise. Services will only be provided under this task after the receipt of prior authorization by the City.

Estimated task budget: \$9,000.

## **TASK 8 – PROJECT MANAGEMENT**

Under this task, Stantec will provide adequate resources to track the project scope, schedule, and budget. Also under this task, Stantec will manage the contract, review and approve sub-consultant invoices and produce project invoices. This task includes up to four meetings with City and WWTP staff.

Estimated task budget: \$5,500.

## **SUMMARY**

The total estimated budgeted required to complete all of the tasks described in this Scope of Services is \$59,000. Stantec will provide the services described in this Scope on a time and materials basis with a total amount not to exceed \$59,000.

## Exhibit B - Fee Schedule



**Stantec**

### 2011 Fee Schedule

| LEVEL | HRLY RATE | DESCRIPTION  |
|-------|-----------|--|
| 1     | \$49      | <b>Entry-level position</b><br><ul style="list-style-type: none"> <li>• Works under the supervision of a senior professional</li> <li>• Recent graduate from an appropriate post-secondary program or equivalent</li> <li>• Generally, less than four years experience</li> </ul>  |
| 2     | \$56      |  |
| 3     | \$62      | <b>Junior-level position</b><br><ul style="list-style-type: none"> <li>• Independently carries out assignments of limited scope using standard procedures, methods and techniques</li> <li>• Assists senior staff in carrying out more advanced procedures</li> <li>• Completed work is reviewed for feasibility and soundness of judgment</li> <li>• Graduate from an appropriate post-secondary program or equivalent</li> <li>• Generally, four years work experience</li> </ul>  |
| 4     | \$69      |  |
| 5     | \$76      |  |
| 6     | \$83      | <b>Fully qualified professional position</b><br><ul style="list-style-type: none"> <li>• Carries out assignments requiring general familiarity within a broad field of the respective profession</li> <li>• Makes decisions by using a combination of standard methods and techniques</li> <li>• Actively participates in planning to ensure the achievement of objectives</li> <li>• Works independently to interpret information and resolve difficulties</li> <li>• Graduate from an appropriate post-secondary program, with credentials or equivalent</li> <li>• Generally, six years experience</li> </ul>   |
| 7     | \$91      |  |
| 8     | \$100     |  |
| 9     | \$108     | <b>First level supervisor or first complete level of specialization</b><br><ul style="list-style-type: none"> <li>• Provides applied professional knowledge and initiative in planning and coordinating work programs</li> <li>• Adapts established guidelines as necessary to address unusual issues</li> <li>• Decisions accepted as technically accurate, however may on occasion be reviewed for soundness of judgment</li> <li>• Graduate from an appropriate post-secondary program, with credentials or equivalent</li> <li>• Generally, nine years experience</li> </ul>   |
| 10    | \$118     |  |
| 11    | \$128     |  |
| 12    | \$140     | <b>Highly-specialized technical professional or supervisor of groups of professionals</b><br><ul style="list-style-type: none"> <li>• Provides multidiscipline knowledge to deliver innovative solutions in related field of expertise</li> <li>• Participates in short and long range planning to ensure the achievement of objectives</li> <li>• Makes responsible decisions on all matters, including policy recommendations, work methods, and financial controls associated with large expenditures</li> <li>• Reviews and evaluates technical work</li> <li>• Graduate from an appropriate post-secondary program, with credentials or equivalent</li> <li>• Generally, ten years experience with extensive, broad experience</li> </ul>   |
| 13    | \$152     |  |
| 14    | \$164     |  |
| 15    | \$174     | <b>Senior level consultant or management function</b><br><ul style="list-style-type: none"> <li>• Recognized as an authority in a specific field with qualifications of significant value</li> <li>• Provides multidiscipline knowledge to deliver innovative solutions in related field of expertise</li> <li>• Independently conceives programs and problems for investigation</li> <li>• Participates in discussions to ensure the achievement of program and/or project objectives</li> <li>• Makes responsible decisions on expenditures, including large sums or implementation of major programs and/or projects</li> <li>• Graduate from an appropriate post-secondary program, with credentials or equivalent</li> <li>• Generally, fifteen years experience with extensive professional and management experience</li> </ul> |
| 16    | \$186     |  |
| 17    | \$215     |  |
| 18    | \$252     | <b>Senior level management position under review by Vice President or higher</b><br><ul style="list-style-type: none"> <li>• Recognized as an authority in a specific field with qualifications of significant value</li> <li>• Responsible for long range planning within a specific area of practice or region</li> <li>• Makes decisions which are far reaching and limited only by objectives and policies of the organization</li> <li>• Plans/approves projects requiring significant human resources or capital investment</li> <li>• Graduate from an appropriate post-secondary program, with credentials or equivalent</li> <li>• Generally, fifteen years experience with extensive professional and management experience</li> </ul>   |
| 19    | \$352     |  |

O:\901050\master\doc\RATE TABLES\2011 Rate Tables\1858,1878\Standard 2011 Table 3.docx

RESOLUTION NO. 11-

RESOLUTION AUTHORIZING THE CONSULTANT AGREEMENT WITH STANTEC  
CONSULTING SERVICES FOR THE WASTEWATER CONSULTING

-----  
THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City Council of the City of Auburn does hereby authorize the  
Director of Public Works to execute the consultant agreement with Stantec  
Consulting Services, Inc. for Wastewater Consulting as required by the  
National Pollutant Discharge Elimination System Permit.

A true and correct copy of said Consultant Agreement is attached hereto as  
Exhibit "A."

DATED: February 14, 2011

\_\_\_\_\_  
William W. Kirby, M.D., Mayor

ATTEST:

\_\_\_\_\_  
Joseph G. R. Labrie, City Clerk

I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify  
that the foregoing resolution was duly passed at a regular session meeting of  
the City Council of the City of Auburn held on the 14<sup>th</sup> day of February 2011  
by the following vote on roll call:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Joseph G. R. Labrie, City Clerk

(This page intentionally left blank)